



Neutral Citation Number: [2021] EWHC 489 (Fam)

Case No: FD20P00694

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2021

Before:

MR JUSTICE WILLIAMS

Between:

RD
- and -
TJ

Applicant

Respondent

(Relocation – BIIA – Transitional Provisions)

Laura Coyle (instructed by Freemans Solicitors) for the Applicant
TJ Respondent in Person

Hearing dates: 10 February 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE WILLIAMS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Williams J :

1. I am concerned with a little girl, H who is now nearly 5 years old; she was born on 27 February 2016. Her mother is R D, who is represented by Ms Coyle of Freemans. Her father is T J who represents himself. I hope they will forgive me if I refer to them as the mother, the father and the child in the course of this judgment which I do only for ease of anonymisation. The child has been the subject of litigation between the mother and father almost continuously since she was eight months old. In November 2017 pursuant to the power contained in Art 11(6-8) of EC Regulation 2201/2003(BIIA) I ordered the mother to return H to England from Poland. The history of the litigation since then is set out in substantive judgments that I delivered in June 2019 and December 2019.
2. In December 2019 I granted the mother permission to remove H temporarily from the jurisdiction to Poland. The father also intended to relocate to Poland. The permission I gave was temporary because I regarded the move as provisional for the reasons I then gave. I identified that the temporary permission was likely to be converted into permanent permission were it to be demonstrated that over the ensuing year that H's relationship with the father was reliably maintained and the mother was able to withstand any negative influence of her family and that the mother's psychological health improved and she received therapy for the underlying conditions that Dr Garrett a consultant psychologist had identified. I listed the case for further review in December 2020.
3. I conducted a very extensive factual enquiry on the mother's application for permission to permanently relocate and on the parties cross applications for child arrangements orders in June and December 2019. Those judgments should be read together with this and indeed with my judgment of 15 November 2017.
4. In my December 2019 judgment I reached the conclusion that it appeared to be in the child's welfare interests to relocate to Poland with her mother. That would have been the case even had the father remained in England, however immediately prior to judgment the father agreed that he also would relocate to Poland. I concluded that the evidence was not such as to enable me to reach a final conclusion at that time but rather a provisional conclusion with an expectation that it would become final were certain conditions or events to occur which would solidify the provisional conclusions.
5. In my judgment I said as follows;
 - i) *Thus, whilst the evidence pointed towards Poland as the place where H's welfare be promoted it carries with it significant uncertainty which was simply incapable of resolution at this point in time. I raised with Dr Garrett and with Ms Julian the possibility of a provisional or conditional move to Poland which would become permanent after a review. **Were H to spend time reliably and regularly with the father during that period thus demonstrating the mother's commitment to it and her ability to withstand any negative influences in Poland and were the mother's anxiety and depression to abate and her personality-based issues to be addressed in therapy that would provide firm foundations for the move to become permanent.** The parties themselves also then began to consider this issue. Although the possibility of the father moving to Poland had been referred to (I think possibly by me) it had not been given serious consideration by anybody.*

- ii) *As a consequence of his further reflection the father said that he was now prepared to move to Poland so that he and the mother could live in Wroclaw where they could both work, obtain accommodation and maintain their shared care of their precious daughter. Not only would this bring H and the mother back into the environs of a familiar culture and family, but it would also place the father and H very considerably closer to the paternal family in Prague.*
- iii) *Had the father not reached this position of his own accord it would have been my decision that H and the mother should go to live in Poland on the basis of temporary leave to remove..... In the anticipation that H's relationship with her father would have been maintained and progressed as evidence that it could continue to do so in the medium to long term and in anticipation of an improvement in the mothers psychological functioning such an order would have been expected to result in a permanent relocation at the conclusion of the review period. Had there been significant problems this court would have retained jurisdiction to end the temporary relocation if that seem to be in H's welfare interests.*
- iv) *Whilst the father's agreement to relocate himself to Poland alters the logistical aspects of H's move, it does not in my view alter the provisional nature of the move either factually or legally. The situation for H is one which is more hope than it is anticipation, but it is far from guaranteed that this will be the solution which will best promote her welfare in the medium to long term. Concerns remain too real to say that it is guaranteed or even reasonably certain, but the indicators are sufficient that I am reassured that the next year will represent a positive change for H and that a move on this basis represents the best way of promoting her welfare.*
- v) *I very much hope that it will succeed in its purpose and that ultimately it will result in the identification of a proposal where both parents will be fully involved in H's day-to-day life, where they are able to fulfil their own personal aspirations personally and at work and where H will be able to prosper in the care of two parents who whilst very different love her dearly, have her best interests at heart and to have so very much to offer her in their own different ways.*

[My emphasis added]

6. The journey from December 2019 to December 2020 was not without its hiccups; surprisingly the Covid pandemic had little impact but rather the father raised issues around the mother's compliance with the terms of the temporary relocation. When the case came back before me in December 2020 the father's position was that the preconditions had not been met and that the mother and H should return to the UK. This position came as something of a surprise to me given that Dr Garrett's updated report was very positive in terms of the improvement in the mother's psychological health and the appropriateness of the therapy that she was undertaking for the conditions Dr Garrett had identified. It was even more of a surprise in the light of the apparent acceptance by the father that the child arrangements order that I had made had been complied with very few issues at all. The father's case appeared to be that the mother's engagement with therapy and her compliance with the order were disguised compliance which were unlikely to be maintained were permanent leave to remove be granted. Also, the father

had experienced difficulties in relation to employment and was contemplating returning to the UK to work. As the hearing was listed for a review the question arose as to what shape the next hearing should take. Should it be an extended consideration of whether H's welfare required her return to the UK with each party putting fully fleshed proposals for life in the UK or life in Poland? Or should the hearing be more summary in nature, considering whether or not the conditions identified in 2019 had been fulfilled? Given the nature of the evidence, in particular the content of Dr Garrett's report and her views on the mother's psychological functioning and sincerity I concluded that the latter course should be pursued.

7. I made an order that recorded that this hearing would be for the following purposes:

To determine whether or not the preconditions for removal have been met so that the temporary relocation is made permanent. If having determined that issue, there are other issues in respect of H's welfare including;

(i) The time that H spends with each parent in Poland.

(ii) H's future schooling.

(iii) And in respect of the Father's concern that the terms of the final order should not be susceptible to unmeritorious variation or challenge by the Mother before the Polish Courts as and when those Courts acquire jurisdiction. These issues may be dealt with on a summary basis depending on Court time.

8. In preparation for this hearing the parties both filed their eighth statements; The fathers ran to 40 odd pages including exhibits and the mothers 60 odd pages including exhibits. Dr Garrett was instructed to provide an updated report which she did on 15 November 2020 and subsequently a further letter on 20 December 2020. Ms Coyle filed a position statement immediately prior to this hearing as did the father. I heard submissions from Ms Coyle and from the father and considered the written evidence.

The Parents Positions

9. The full detail of the parties factual evidence and their submissions are contained within their witness statements, their position statements and were further clarified during oral submissions. What follows is a summary only.
10. The mother's principle submission was that the preconditions had been fulfilled and there was no basis for the court to do anything other than confirm that the relocation of the child should now be permanent. The mother was surprised to receive the father's position statement in December indicating that he sought a return of the family unit to the UK given how successful the move to Poland had turned out to be. On behalf of the mother Ms Coyle emphasised the following points.

The Preconditions:

- i) Although there was some delay in accessing the therapy she has engaged with psychological treatment and relies on the report Dr Garrett which makes clear that her psychological condition has improved, but her engagement is genuine

and that the treatment program she is undertaking with the Polish psychologist is appropriate for the issues Dr Garrett identified.

- ii) The relationship between the child and the father has been maintained and progressed in accordance with the child arrangements order made. The parties live within reasonable proximity to each other and to the child's nursery and the pattern is that in Week 1 the child is with the father from Thursday after nursery school until Monday morning and in Week 2 from Wednesday after nursery school until drop off at nursery school on Friday morning. She travels frequently to see the paternal family in the Czech Republic when she is with the father. The mother travels infrequently to the maternal grandparents because of the distance involved. They are not a substantial presence in her and the child's life. Concerns over whether they would be a negative influence have not materialised. The mother has supported the child's relationship with the father and will continue to do so. She has agreed additional time, in particular when the father returned from England to Poland at the beginning of the pandemic in order to minimise the child's movements between households.
- iii) Holidays are in general shared equally and a mother proposes that continues so although she does not believe that in the long summer holiday the child should spend more than 14 days consecutively with either parent.
- iv) Assuming the father remains in Poland she is confident that the coparenting arrangement can work as it currently does. Although there are minor disagreements over day-to-day matters in general it works, and the court cannot micromanage matters any further.
- v) Both parents and the child need to be clear of litigation. The mother has no desire to continue any litigation in Poland.
- vi) The mother believes that the current arrangement has worked well and there is no need for it to be altered to create the seven days on seven days off split that the father seems to propose. The addition of a further night in week two would lead to a rather fractured structure and the mother would oppose a move to a one week on one week off pattern which the court does not have time to explore in detail in terms of its impact.
- vii) The mother says it is too early to decide on school given the child is not due to move until September 2023. In any event the mother would prefer the child to enter the Polish state system rather than to remain in an international school. Much of the education in the Polish state system will allow the child to develop her English and it will help her to integrate into the Polish community. It will also encourage the father to integrate into the Polish community which he needs to do. He will be able to assist in her education as they speak Czech together and some of her lessons will be in English. The father should consider learning Polish in order to further support her. She believes an international school would not meet her best interests. She also does not have the income to be able to fund the international school; indeed, she is going into debt now paying her share of the private nursery fees.
- viii) For child maintenance given the income disparity between them.

- ix) She wishes to renew the child Polish passport and seeks the father's agreement to that.
 - x) The father will have the security of knowing that any order made by this court can be registered in Poland as it is covered by the transitional provisions of the withdrawal agreement. The mother paid last time and submits that the father should pay this time as he is in a better position. Although the Polish court will have jurisdiction in future the mother does not wish to embark on any further litigation whether to restrict the father's parental authority or to alter the child arrangements. The mother would propose that the order include recitals that in the event of any dispute the parties will seek to undertake mediation or some other route to resolving any difference.
11. In his statement and in his position statement the father submitted that the preconditions had not been fulfilled. In consequence his position was that H and the mother should return to England as would he. He had not put forward fully fleshed out proposals for this because I had directed that the focus of this hearing would be on whether the preconditions had been fulfilled or not. Had he satisfied me that they had not been fulfilled it would have necessitated a further hearing to look at the arrangements that would have been put in place if the child were then to return. He accepted that if the child remained in Poland he would remain there to and would not return to the UK notwithstanding the indication that he had been given in December 2020 that he would have to return to England for work. In the event that I did not the preconditions had not been fulfilled he sought orders which would provide for a 50-50 shared care arrangement in Poland moving from a 6/8 split to a 7/7 split; he sought a specific issue order that the child attend an international school when she left the international nursery and he sought such orders as would the maintenance of the English order notwithstanding the acquisition of jurisdiction by the Polish courts.
12. The father characterises the position thus *'However, while I have fully supported R when she moved to England with H and appreciated her own undertaking for doing so, I have been met with only obstacles and high difficulties in Poland. I have really hoped that R will want for H to have a father in her daily life, have an understanding for my efforts, and to co-parent. It is my case that it is in H's interests for her to return to England, where she can have a full and meaningful relationship with both of her parents and through her parents to have full and unrestricted contact to her international family and heritages. I believe that this can be achieved when future Family Court proceedings are stayed during H's childhood which can be only accomplished under the Jurisdiction of England & Wales.'*
13. In support of these overarching submissions made the following points.
- a) The mother's attitude to him this past year convinced him the mother wanted to parent the child to the exclusion of him. He referred to an argument in which the mother was angry and had said she was well and was going to be firmer with him. She had said that her illness was because of him not because of her past.
 - b) The mother had failed to seek therapy in Poland in a timely way and had stopped taking medication without the advice of the psychologist. Her

family do not believe she needs therapy and have not supported her to access it in the way one would expect if they accepted, she had a problem

- c) The court should examine the Polish psychologist report and disclose that to the father and not simply rely on Dr Garrett's interpretation of it. The Polish psychologist does not accept that the mother has a personality disorder and nor does the mother. She cannot be treated successfully if they do not accept this.
- d) Dr Garrett has not been objective and has a negative opinion of the father as a result of what was said. The mother still regards him as abusive despite the findings of the court. The Mother is not getting treatment to help her work with the father but for other reasons.
- e) If the treatment was effective, he would not want to relocate to England, but it isn't.
- f) In relation to his relationship with the child and co-parenting there are on-going difficulties. For instance, they are co-sleeping and if the father asks to see Red Book, she won't give it to the father but photographs it. The mother sometimes waits for him to confront him, she doesn't avoid him which she would if she was fearful and on many of his requests for information, for instance if the child has suffered a bruise, the reply is 'none of your business'. Although he has seen the child the mother has not really been supportive in the way one would expect if you were really committed. The child says that the mother's extended family are negative about him and the mother is not free from their influence.
- g) In terms of schooling the child would start International School in September 2022. If she went to Polish Primary school, she would start at age 7 in 2023. There are 2 international schools that are within his capacity to pay for them and which are close to where they live and one is a partner school to the child's current school, so many of her peers will go there. The father submitted that such an order would be in her best interests because,
 - i) She is an international child but 80% of the children are Polish because their parents seek a better education for them. She will be integrated into a Polish and an international community.
 - ii) He will meet the costs of her education.
 - iii) It would enable him to be fully engaged in her education and to support her. If she were educated in the Polish state system, he would be marginalised both in terms of day-to-day help he could provide as he does not speak Polish and because he could not participate in parents evenings.
- h) In relation to the division of time the father proposed adding another day onto week to say that he would have the child from Tuesday after nursery school until Friday morning. When I explored this and how fragmented

this would make the child's life, he enthusiastically adopted the idea that she should move to one week on one week off. This he said would enable him to spend more time in the Czech Republic when she was not with him. The father said he was prepared to accept a 6/8 split in England because he did not want to marginalise the mother but in principle, he felt in Poland there should be equal shared care. He said this would also be viewed in the Polish authorities or courts as a shared care which would give him a greater degree of security there. The father said he wanted the child to see him as an equal parent.

- i) In relation to passports and international travel the father reminded me that orders had already been made which allowed him to apply for a UK passport for the child. He said he had not done so yet but would do so once his UK passport had been issued. He also noted that the previous orders also permitted the mother and father, with the cooperation of the other, to renew Polish and Czech passports and national identity documents.

The Law

14. The framework within which the court decides relocation cases has been considered in many cases in recent years in particular The most recent authoritative decision on the approach to permanent overseas relocation is *Re F A Child* (International Relocation Cases) [2015] EWCA Civ 882, [2017] 1 FLR 979. The decision is a paramount welfare decision where the essential task is to weigh up the two competing options. That requires a comparative evaluation. The proper approach is as follows:
 - i) The only authentic principle is the paramount welfare of the child;
 - ii) The implementation of Section 1 (2A) of the Children Act makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent;
 - iii) The Welfare Checklist is relevant;
 - iv) In assessing paramount welfare in international relocation cases, the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent;
 - v) The effect of an international relocation where the child will live in a different country to one parent is such that the Article 8 rights of the child are likely to be infringed and the court must conduct a proportionality evaluation.
 - vi) In addition to the Article 8 rights, particularly of the child, I must also factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis unless that is contrary to her interests. See Article 9 of the UN Convention on the Rights of the Child.

15. I have well in mind the statutory presumption of parental involvement, the no order principle and the welfare checklist set out in section 1(3) of the Children Act 1989.
- (3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to –*
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, emotional and educational needs;*
- (c) the likely effect on him of any change in his circumstances;*
- (d) his age, sex, background and any characteristics of his which the court considers relevant;*
- (e) any harm which he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;*
- (g) the range of powers available to the court under this Act in the proceedings in question.*
16. The determination of child arrangements, including shared live with orders are also based on paramount welfare: *Re W (Shared Residence Order) [2009] EWCA Civ 370*. However, the courts have made observations which inform the evaluation of paramount welfare. These indicate that shared lives with orders;
- i) Emphasise the fact that both parents are equal in the eyes of the law and can have the advantage of conveying a message that neither parent is in control and that the court expects parents to co-operate with each other.
 - ii) Require circumstances positively indicating that the child's welfare would be served by one.
 - iii) May be appropriate where it provides legal confirmation of the factual reality of a child's life.
 - iv) May be appropriate because it is psychologically beneficial in terms of the equality of their position and responsibilities.
 - v) Do not require exceptional or unusual circumstances.
 - vi) Do not require the child to be spending their time evenly or more or less evenly in the two homes.
 - vii) The inability of parents to work in harmony was not a reason for declining to make such an order but nor is such inability by itself a reason for making such an order.

- viii) Might be justified by the deliberate and sustained marginalisation of one parent by the other.
- ix) May be appropriate even where the parents live in different countries.
17. These indicators reflect the broad range of factual circumstances in which courts have considered to be in a child's best interests for a shared lives with order to be made.
18. Ultimately the question for relocation, child arrangements including live with orders and specific issues such as schooling is what will best promote the child's welfare.
19. The father has expressed concern about how an English order will be interpreted in the Polish courts and in particular whether the approach on shared parental authority in Poland (see the letter from the mother's lawyer dated 14 May 2019) might result in his parental responsibility being limited. Having regard to the fact that the child will be living with both her parents on a broadly equal basis and that each recognises the others right to play a full role in making significant decisions, for instance on education, I doubt that this approach would in fact be applied and the order I make will reflect the full role each expects and accepts the other will play.
20. These proceedings, which commenced prior to our departure from the EU, will be concluded by this judgment and order and they will be recognised in Poland pursuant to Article 21 BIIA and will be capable of being declared enforceable pursuant to Article 28 of BIIA in the same way that my order of December 2019 was declared enforceable in the Polish courts. This is because although the UK left the European Union in January 2020 the effect of the Withdrawal Agreement is both to maintain the jurisdiction of the court to conclude the proceedings and to make orders given in proceedings which were commenced prior to 31 December 2020 subject to the provisions of BIIA (EC regulation 2201/2003). The European Commission guidance of 27 August 2020 in the form of a 'Notice to Stakeholders. Withdrawal of the United Kingdom and EU Rules in the field of civil justice and private international law' confirms this position.
21. The Withdrawal Agreement is a treaty and is implemented into UK law by the European Union (Withdrawal Agreement) Act 2020 (WAA), which received Royal Assent on 23 January 2020. Section 7A of the 2018 EUWA (inserted by s.5 of the 2020 WAA) provided for the general implementation of the Withdrawal Agreement without further enactment. Regulation 3 of the Jurisdiction and Judgments (Family) (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/519) ('JJFAEUER') revoked Council Regulation 2201/2003 (BIIA) when it came into effect on IP completion day namely 11pm 31 December 2020 but this is subject to the transitional provisions which are set out in Article 67 of the withdrawal agreement.
22. Article 67 of the Withdrawal Agreement provides;

Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities

1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, in respect of legal proceedings instituted before the end of the transition period and in respect of proceedings or actions that are related to such legal proceedings pursuant to Articles 29, 30 and 31 of

Regulation (EU) No 1215/2012 of the European Parliament and of the Council (73), Article 19 of Regulation (EC) No 2201/2003 or Articles 12 and 13 of Council Regulation (EC) No 4/2009 (74), the following acts or provisions shall apply:

(a) ...

(b).....

(c) the provisions of Regulation (EC) No 2201/2003 regarding jurisdiction;

(d)

2. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:

(a);

(b) the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded before the end of the transition period;

(c);

(d);

23. Regulation 8 of the Jurisdiction and Judgments (Family) (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/519) (JJFAEUER) as amended by Reg 5 of the Jurisdiction, Judgments and Applicable Law (Amendment) EU Exit) Regulations 2020 provide that;

Saving and transitional provisions

8.(1) Nothing in these Regulations affects the application of paragraphs 1, 2(b) and (c) and 3(a) and (b) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made.

24. The combined effect of those provisions in so far as Article 67(2) (b) of the Withdrawal Agreement is therefore that Judgments given in proceedings instituted before 31 December 2020 will fall to be enforced under Chapter III of BIIA.

25. Both parties agree that the order in this case should be declared enforceable in Poland and that they will co-operate in the applications that need to be made to achieve that.

26. Of course, the child will (if she has not already as a matter of fact) become habitually resident in Poland and with the conclusion of these proceedings the courts of England and Wales will no longer have jurisdiction over her; Article 9 of BIIA having no application in this case given that this order does not deal with access rights and perhaps

more importantly the fact that neither parent will remain habitually resident here. In the event that there is any dispute between the parents over matters of parental responsibility relating to the child it will be the courts of Poland which will have jurisdiction. However of course they will I am sure have due regard in any such proceedings to the judgments this court has given and to the order which will have been registered for enforcement there and will form the foundations for any future evaluation of her welfare.

Relevant Evidence

27. I do not propose to set out the contents of the mothers and the father's statements. I have made reference to relevant aspect of it and recording the parties positions above. I have of course read their statements and remind myself of the history by rereading my earlier judgments. Nor do I consider it necessary to set out at any great length the parties evidence because in respect of the preconditions the most important evidence in relation to the psychological aspects is that of Dr Garratt and in relation to the maintenance of the relationship both the mother and the father are in agreement that it has been maintained and that there have been no significant issues either with the mother's support for it or the maternal grandparents interfering or seeking to undermine it. I say that notwithstanding the father's concerns because the reality is that for nearly a year there has been full compliance with the order that I made in December 2019 in relation to the shared care arrangement for the child once both parents were in Poland.
28. Dr Garratt had provided a lengthy report in October 2019. A second psychological report is dated 15 November 2020 and it is further expanded upon in her letter of 30 December 2020.
29. One of the father's main concerns in relation to the mother's engagement with psychological therapy was that it was disguised compliance simply to comply with my order and with the ultimate aim of misleading me. Dr Garratt conducted Psychometric testing, and these did not disclose concerns that the mother was seeking to manipulate the tests. Her results in September 2020 showed a significant improvement in her anxiety and depression from October 2019 moving from severe to normal and a significant improvement in her self-esteem. Dr Garratt concludes;

However, since therapy began, there is clear evidence, in my view, of significant and sustained improvement in Miss D's mental state (she is no longer anxious or depressed) and her personality functioning. She is functioning well in full-time employment which she enjoys and has a range of leisure interests and social/family (from her brother and sister-in-law who live locally) support.

30. In terms of the treatment plan Dr Garrett says;

"Ms Z, I note that she has proposed a therapy plan relating to cognitive-behavioural therapy techniques, schema therapy strategies, psychoeducation and dialectical behavioural therapy (DBT), to assist Miss D in understanding her "schemata" (negative/dysfunctional thoughts and feelings which develop early in life as a result of the need for connection, autonomy, play and spontaneity, limits and assertion not being adequately met. The negative patterns are repeated and elaborated upon throughout a person's life and pose obstacles for accomplishing one's goals and getting one's needs met) and addressing her self-esteem, as well as developing skills to address and prevent these, including mindfulness, interpersonal

effectiveness, emotional regulation, assertiveness and distress tolerance skills. She suggests that one year of intervention is indicated, based on weekly sessions. This, I consider is an entirely appropriate therapy plan which addresses all of the issues and concerns (including the personality traits of concern, schema therapy and DBT being designed primarily for so-called personality disorder) I identified in my previous report. Although Ms Z appears to take issue with any diagnosis of personality disorder, I would note that it is a perfectly legitimate difference of professional opinion as to whether it is helpful to use such diagnostic categories and whether an individual fulfils diagnostic criteria. I do not regard this as significant in that Ms Z has, in my view, proposed an appropriate therapy plan which encompasses the personality-related issues of concern which were identified by myself and the Polish Psychotherapist, and which is of commensurate duration, especially as she had previously attended over 30 therapy sessions in Poland.

31. Other observations of note include;

- i) *She is clearly functioning independently from her parents and suggested that she has been pleasantly surprised by how well this has worked out, indicating that she is glad that she no longer has to answer to her mother.*
- ii) *I would attribute these improvements in part to Miss D and H's move to Poland and in part to the psychological intervention which Miss D has been undertaking (with a Psychologist who I endorsed prior to the intervention commencing) for some considerable time now- such that she has now attended over 50 sessions of psychological intervention in total in the last few years, of which 22- at the time of this assessment- had taken place this year*
- iii) *No concerns have been raised by Miss D's treating Psychologist regarding her engagement or progress and the reports from H's nursery and Miss D's employer are positive. Therefore, I am of the opinion that the prognosis is positive. In my opinion, Miss D's decision to reduce and stop taking her medication was done appropriately*
- iv) *By virtue of the therapeutic alliance, as well as specific DBT strategies the personality traits of submissiveness, lack of assertiveness and self- effacing tendencies are being addressed, and her capacity to self-regulate improved. Schema therapy techniques will address the separation anxiety and dependency issues, helping Miss D to improve her initiative and autonomy, as well as her fear of loss of support and nurturance. This will enable her to focus on H more appropriately and consistently, bolstering the attachment relationship and to model emotional sensitivity and adaptive ways of expressing and managing emotions. This is a dynamic "work in progress" which is progressing appropriately, in my view.*

32. In her subsequent letter dated 30 December 2020 Dr Garrett made the following observations in answer to the question: In your opinion, has Mother engaged with appropriate psychological therapies in Poland and is there any indication from the information provided by her therapist or in the Mother's reporting that would suggest that engagement is superficial and purely for the purpose of the Court process?

- i) *The therapy is suitable (as stated in my previous report, "this, I consider is an entirely appropriate therapy plan which addresses all of the issues and concerns*

(including the personality traits of concern, schema therapy and DBT being designed primarily for so-called personality disorder”)

- ii) *I would suggest that it is likely that the therapy has assisted in helping Miss D to feel less anxious and depressed (indeed she was, when I re-assessed her, no longer either anxious or depressed, more positive in herself and her personality functioning had improved. Further, psychometric assessment indicated that she was not attempting to influence the outcome of the assessment by presenting herself in an unduly positive- or negative-light). She also reported finding it helpful to be able to speak to her therapist when under stress.*
 - iii) *I am entirely satisfied that Miss D has engaged with appropriate psychological therapy in Poland. I do not consider that there any indication from the information provided by her therapist or in the Mother’s reporting that would suggest that engagement is superficial and purely for the purpose of the Court process. Indeed, I consider that this intervention is progressing well, and is likely to be effective in addressing Miss D’s psychological issues.*
 - iv) *The mother was positive about the child’s relationship with the father and voiced no concerns about the time the child spends with the father. She recognised that the child misses her father when she is with her and vice versa. The mother volunteered for the child to stay longer with the father when he returned to Poland in order to avoid her moving between their households with the consequent risk of covert transmission. This does not indicate that the mother is hostile to the child spending time with the father. However, she did note that after that period of 8 to 10 days the child was unsettled and so she does not support longer periods of contact at this stage.*
33. The report from the child’s nursery records that she is progressing well socially and academically. The mother thought she is progressing well developmentally and noted this has been observed by the psychologist working at the nursery. The nursery described her in very positive terms; she is sociable, bright, calm and independent. The report does not suggest any issues with her emotional development or anything that would betray difficulties in her life outside nursery school. There is no hint of her speaking negatively about her father which might suggest she was being exposed to negativity about him at home.

Evaluation

- 34. In relation to the preconditions that I identified that would cement the conclusion that the child’s welfare would be best promoted by living in Poland the evidence is in my view clear and almost entirely in support of the conclusion that they have been fulfilled.
- 35. The father submits that an indicator of the mother’s attitude is that the findings that I reached and still repeats the allegation that the father abused her. I do not consider that the mother is in denial of the findings. There is a difference between the legal definition of what amounts objectively to coercive and controlling behaviour and what a person

subjectively experiences as emotional abuse. The mother's description to Dr Garratt reflects this divergence

Miss D became tearful at this point, commenting that her therapist "say[s] it's emotional abuse...but you can't say it out loud in the Court, but I don't know what the Court definition is of abuse". She went on to suggest that she is uncertain whether or not Mr J was abusive towards her, adding "I don't care whatever label it has, I wasn't happy in that relationship"

36. That description does not to my mind depict an individual in denial of the court's findings.
37. The father submits that the mother is guilty of disguised compliance. In the course of the assessment the mother said *that she "don't want to say something that will go against me in Court"* and the father is concerned that this is an indicator that the mother is not being honest with Dr Garrett about her views. That the mother is not being entirely frank is the only logical conclusion of this remark; she clearly had something in her mind that was critical of the father in relation to his care of the child but was not prepared to express it out of concern that it might be used against her to support the case that she was hostile to the father. I think the mother is very sensitive to the fact that comments she has made which were frank have been used against her and to some extent have been misconstrued by the court (see my observations on the definition of domestic abuse in my judgment of December 2019). Whilst this remark is hard to explain other than the mother withholding material it is moderated by the fact that she expressed it. This is more consistent with her being fairly open in how she expresses herself. In any event the overall tenor of Dr Garrett's report including the psychometric testing, but also Dr Garrett's own evaluation and supported by the Polish psychologist's view is that the mother is genuinely engaging with the therapy and is benefiting from it. Both the psychometric test and her demeanour and presentation as evaluated by Dr Garratt support the conclusion that and the therapy.
38. I am therefore satisfied that the mother has genuinely engaged with the psychological therapy, that it has been of benefit to her well-being and that the proposed treatment plan for the underlying psychological issues that the mother needs to address and that she is genuine in wishing to see it through to a conclusion.
39. I am also satisfied that she supported the relationship between the child and the father. This is demonstrated by the fact that the order I made has been implemented in Poland in full measure. I am also satisfied from Dr Garrett's report and what the mother has said in her evidence that the mother is genuine when she says that she will support that relationship and does not wish to resort to further litigation in Poland. The fact that the mother still feels some hostility to the father and is critical of him in various ways, or is holding back some criticism, is not inconsistent with her also supporting the relationship. The father is critical of the mother, yet he supports the relationship. Being able to criticise another parent does not mean that one is inherently hostile to the child having any relationship with them. The proof that the mother is supportive both in terms of compliance with the order but also in day-to-day life is demonstrated in my opinion by the fact that the child moves so easily from the mother to the father and back again and has what appears to be a good relationship with both her parents and is flourishing at nursery. Where the mother covertly hostile to the father I do not believe that a child of this age could be manipulated so as to hide this. The child obviously views her father

positively and this is a product of both her experience with him but also that the mother is supportive of her relationship with him. The role of the maternal family appears to be largely peripheral in the child and the mother's life. It may well be that the child's grandparents on occasions express negative views about the father and that the child picks up on this. However, that is a very small part of the child's life. Given the history of the case it would hardly be a surprise that both the mother and the father and their extended families are in various ways critical of the others. Sadly, not all members of extended families are able to hide their feelings following the breakdown of a relationship. However, their role in the mother's life is limited and I am satisfied that she has is able to exercise her own choices in relation to the child and that she will continue so to do.

40. I am therefore satisfied that with those two pieces of the jigsaw slotting into place that the overall evaluation of this little girl's welfare is that she should make her life in the medium to long term in Poland being cared for jointly by her mother and father. The application of the paramount welfare of the child and the welfare checklist lead inevitably to this conclusion. Of course, there remain some risks; nothing is certain in life but the prognosis in terms of the two main risks that I previously identified namely the mother's psychological well-being and the maintenance of the father-daughter relationship is good.
41. I will therefore grant the mother's application for leave permanently to remove the child from the jurisdiction to live in Poland. In addition, I will make an order that the child shall live with her mother and father in the city they have settled in.
42. In relation to the amount of time that the child lives with each parent I have reached the conclusion that the arrangement I settled upon in December 2019 should remain in place. It has worked on the ground for the child and indeed for the mother and father and there is no compelling welfare reason to alter it. I do not consider that it will make any difference to the child in terms of her attitude to her father to add an additional night. The 6/8 division I am confident will enshrine her mother and her father as equally important figures in her life. I do not think that altering the split to 7/7 would bring any welfare benefits to the child in terms of her ability to travel to and from the Czech Republic; certainly not by adding a Tuesday night onto the current arrangements. It might bring a welfare benefit to the father were it to move to a one week on one week off pattern which would allow him to live in the Czech Republic one week and Poland one week, but this would be for his benefit not his daughters. Indeed, it would mean that he was not living in the same country that she was for a significant amount of the time and would limit his ability to integrate into life in the city the family have settled in. In this summary hearing I have not been able to dedicate the time or enquiry that moving to a one week on one week off arrangement would require. It would be a significant change for this little girl, and I do not feel able to determine that sort of application. Part of the rationale for settling upon the 6/8 split was that the mother had been the child's primary carer and that she needed support in ensuring she could hold her own in negotiating shared care with the father and that some imbalance in her favour would assist in this. I consider that those reasons remain valid. I will therefore make a shared lives with order which continues the current arrangements and makes provision for the sharing of holidays on an equal basis but with the rider that the share of the long summer holidays will be split so that the child does not spend more than 14 days away from either parent.

43. In relation to the issue of the child's schooling I am satisfied it is a welfare decision which can properly and indeed should be taken now. If she were to move up from her private nursery to the international primary school that would take place in the autumn of 2022. The decision on which school should be applied for will need to be taken at some point in the next 12 to 15 months I would expect. If it is not dealt with now it will mean that the first year to 18 months of the family's permanent relocation to Poland will be marred by a background issue rumbling on and the potential for litigation in the Polish courts if the parents were not able to agree. I consider this to be wholly inimical to the child's welfare. In addition, 'I am satisfied that the points in favour of the child moving from her international nursery to an international primary school are sufficiently powerful at this stage to enable the decision to be taken. The reality is that this little girl is an international child with parents of different nationalities who chose to settle in the UK. This child will have triple nationality and will be brought up speaking three languages. That is a huge advantage to her in the future. Being educated in an environment which reflects that international background seems to me to be the appropriate educational setting for her. It will allow her to have both parents fully engaged in her education and supporting her in it. However, given the nature of the student body in the two schools the father has identified she will be able also to integrate into the Polish community in which she lives. This I believe would also enable the father to better integrate. Were she to be educated within the Polish state system I have little doubt that she would get a good education, including in English, but it would be essentially a Polish education rather than an international education. The father would find it much harder to play a role in her education either at home or with the school and I am satisfied this would be a welfare detriment to the child. However, the mother is not in a position to meet the costs of private education and so the father will meet the costs. The school will be selected which father can afford and the mother selects one of those two schools. Each parent will need to cooperate in the filing of the necessary forms. A specific issue order is made in those terms
44. My conclusions in relation to the mother's support for the relationship are also relevant to the father's fear that the orders made by this court may be undermined once the jurisdiction of this court is complete and jurisdiction shifts to the courts of Poland. The mother I accept does not wish for further litigation but wishes to live her life. It is she who has proposed a non-court-based mechanism to resolve any future significant differences between the parents over the child's upbringing. I would be astounded if the mother were to commence litigation in Poland either to restrict the father's parental authority or to alter the child arrangements given what she has said in this court. If that were to occur, she would have perpetrated a significant deception based upon Dr Garrett, her Polish psychologist and upon myself and the father. I do not believe that this is the case. I therefore consider that the making of this order and the ability to have it declared enforceable in the Polish courts together with the mother's genuine expression of support for the continuation of this order and the child's relationship with the father will be sufficient to ensure that the relationship of the father and daughter endures and prospers. In the event that the mother or father engages the Polish courts jurisdiction they will I am sure take into account my judgments and the orders I have made but ultimately, they will take this little girl's welfare as their paramount consideration as I have done. The father will be responsible for making the application for the order to be declared enforceable in Poland and will be responsible for the costs thereof. The mother has agreed to cooperate in the making of such application; I know not whether she will need to sign forms or attend court, but she has indicated she will

do what is necessary in order to support the application. There is no question of her seeking to appeal against any declaration of the order being enforceable.

45. The issue of passports is I think now agreed. The mother will retain the Polish passport and the father will cooperate in obtaining its renewal. Likewise, the father shall retain the Czech and UK passports and the mother will cooperate in obtaining those.
46. All of the Provisions relating to this little girl and the exercise of parental responsibility in respect of her should be brought together in one order which will supersede all previous orders, and which will then be subject to an application for it to be declared enforceable in Poland.
47. I very much hope that both the parents and this little girl are now able to focus on living their lives and settling into a way of life in Poland which allows each of the parents and this little girl to make the most of the opportunities that life offers.
48. That is my judgment.